

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2232 OF 1980

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

ISSARDAS TOLARAM

VERSUS

UNION OF INDIA & ORS.

Appearance:

MR CJ VIN for the Petitioner

MR MUKESH PATEL, for Respondent No.2

MR PB MAJMUDAR for Respondent No.3

Coram: S.K. Keshote,J

Date of decision: 23.12.1996

ORAL JUDGMENT

1. The petitioner, a displaced person, filed this petition before this Court and prayer has been made for

quashing and setting aside the order of the respondent No.2 dated 4.4.80, and also for quashing and setting aside the public auction held on 30th and 31st July 1980, so far as the plot in question is concerned. Further prayer has been made for declaration that the petitioner was entitled for allotment of plot straightway as per the rules on fixed value.

2. The facts which led the petitioner to file this Special Civil Application are as follows:

The petitioner was allotted a room No.586 situated at Ramnagar colony, Surat by the respondent No.2. The petitioner was paying Rs.13/- as rent to the concerned authorities. It is in fact, not a room as stated by the petitioner, but a tenement. The tenements have been constructed in the year 1950 by the Government for rehabilitation of displaced persons from Pakistan. Subsequently this room (tenement) was offered to the petitioner for purchase and the petitioner accepted that offer and had purchased the aforesaid room in the year 1954 by adjusting his verified claims. In the colony where the aforesaid tenement is situated, certain open plots near and adjacent to the tenements, constructed were decided to be leased out to the displaced persons occupying the house. A piece of land admeasuring 65'x30' near to the tenement No.586 was leased out to the petitioner by respondent No.2 in the year 1961 at the rent of Rs.19.50 per year. It is case of the petitioner that he paid the rent upto year 1966 amounting to Rs.117/- as per receipt dated 17.2.66. It has further been stated by the petitioner that thereafter also he has paid yearly rent of the said plot upto 1974 as per receipt dated 20.7.73. It is also case of the petitioner that in the year 1974 the respondents wanted to cancel the lease of the petitioner of the land aforesaid and of the other 50 such displaced persons of the said colony and therefore alongwith these 50 persons, the petitioner formed an association and represented the matter to the respondent and ultimately the respondent No.2, by its letter dated 30.1.76 agreed to sell the plots in favour of the petitioner and said 50 persons provided they paid increase rent. It is say of the petitioner that the association has been fighting out with the authorities for charging the original lease amount and not to increase the rent and the said litigation is pending with respondent-Government.

3. The respondent No.2, vide its letter dated 4.4.80, informed the petitioner that as he has given up possession of the plot in dispute in the year 1970, his request for allotment of the plot for business cannot be

accepted. Though the petitioner has challenged this letter, but he has not filed copy of this document alongwith this Special Civil Application. However, this document is produced by the respondents, alongwith their reply affidavit which is at page 110, as annexure R.6. This letter was sent to the petitioner in connection with his reply dated 11.3.80. The petitioner has come up with the case that no such statement was given to the Circle Inspector by him on 19th March 1983, as alleged, and therefore, he refuted the contents of the said letter by application dated 10.4.80. That application has also not been filed by the petitioner alongwith this Special Civil Application. It is not in dispute that the date of alleged statement made by the petitioner is 11.3.80 and not 19.3.80.

4. Further averments of the petitioner in this Special Civil Application are that a public auction notice dated 11.4.80 was issued by the respondent No.2 for auction of the plot of the petitioner and also for other plots which were not occupied by the displaced persons. The petitioner states that this public auction was objected to by the association and ultimately the respondent No.2 issued another notice of public auction vide notification dated 18.7.80 and the auction was fixed on 30th and 31st July 1980. The petitioner states that he objected to the said public auction by giving representation to respondent No.2 on 23.7.80, but inspite of this representation, auction has been conducted. Objections were invited against sanction of the said public auction by respondent No.2 vide letter dated 1.8.80. The petitioner's case is that he filed objections on 2.8.80 and also approached respondent No.2 on the said date but the respondent No.2 declined to do anything in the matter. Hence this Special Civil Application before this Court.

5. The respondents No.1, 2 and 3 have contested this Special Civil Application. The respondent No.3 is the purchaser of the part of plot in dispute in the open auction. Both the respondents have filed a detailed reply to the Special Civil Application. The petitioner filed further affidavit in the form of rejoinder. The respondents have also filed number of documents.

6. The learned counsel for the petitioner contended that the respondent No.2 has wrongly come to the conclusion that the plot in dispute has been surrendered by the petitioner in the year 1970 and as such his right of consideration for allotment of the plot has been extinguished. The basis of this assumption and

presumption of respondent No.2 is incorrect as the petitioner paid the rent of the plot upto year 1974. It has next been contended that as a matter of fact, the petitioner is doing business, in the said plot, of selling milk and keeping Buffaloes. It has further been contended by the learned counsel for the petitioner that value of the said plot at Rs.6,000/- was fixed by the Government and therefore it has to be allotted straightway to the petitioner without holding any public auction. Carrying this contention further, the learned counsel for the petitioner contended that the respondent No.2 has failed to appreciate that the Government has decided to sell the plot straightway to the petitioner and 50 other persons, provided they pay increased rent for which dispute was going on and representations were pending with the Government. Concluding the submissions, the learned counsel for the petitioner contended that the auction of the plots in these facts and circumstances is wholly arbitrary and unjustified.

7. The learned counsel for the respondent No.3 raised a preliminary objection and contended that the petition deserves to be dismissed only on the ground that the petitioner has deliberately and purposely, for his own gains, concealed very very important facts and got the order in his favour in the form of Rule and interim relief, and as such this writ petition deserves to be dismissed only on this ground and the Court may not go on the merits of the case. On merits, the learned counsel for the respondent No.3 contended that the petitioner has no right whatsoever on the land in question though at one point of time the land was given to him on rent, which cannot be said to be a lease hold rights. In the year 1970 the petitioner has given up possession of the land in dispute and subsequently in the year 1974, the rights of the petitioner, may be of tenancy or lease hold as claimed by the petitioner, were terminated by the competent authority, which order has also been affirmed in the appeal. In view of this fact, the claim of the petitioner for allotment of this plot was not tenable. It has next been contended that the petitioner has failed to point out under which provisions of the Displaced Persons (Compensation & Rehabilitation) Act, 1954, the petitioner has a preferential right of allotment of land. The petitioner was a refugee and a displaced person from Pakistan and for rehabilitation of such class of persons a scheme has been framed and undisputedly the petitioner has been allotted a tenement and that may be the accrued right which has already been given to the petitioner. Merely because the lands were lying vacant in the area, and therefore given on rent to the petitioner and he

remained in possession thereof for about nine years, will not culminate in any right, much less a preferential right of allotment of the plot to the petitioner. The plots in dispute are the open plots in the area and as such the same are to be disposed of by a public auction. It has next been contended that the petitioner has not objected the auction of the plots. In Special Civil Application, the petitioner has come up with the case that against the public auction notice dated 11.4.80 the association has objected. The petitioner has not filed a copy of the objection filed by the association nor any material on the record to show that he filed any objections against it. Against the next notice of public auction also the petitioner has not made any grievance. The averment made by the petitioner that he made a representation to the respondent No.2 on 23rd July 1980 is also an averment without there being any factual foundation in support thereof. The petitioner did not produced copy of the representation aforesaid, before this Court nor has produced any other evidence on record to show, prove and establish that he made such representation. It is urged by the learned counsel for respondent No.3 that three other auction purchasers of the other parts of the plot were not impleaded as party to this writ petition and as such, this writ petition suffers from the defect of non joinder of necessary parties. Lastly the learned counsel for the respondent No.3 contended that the petitioner's conduct is also of such nature which disentitle him from seeking any equitable relief from this Court under Article 226 of the Constitution of India. After getting favourable interim order from this Court and Rule nisi the petitioner has unauthorisedly entered into possession of the land in dispute and to protect that illegal and unauthorised possession, he approached the Civil Court where he persuaded the Court to grant interim relief by protecting his illegal and unauthorised possession. In the civil suit also the petitioner has not impleaded the respondent No.3 or other three auction purchasers as party thereto.

8. The learned counsel for respondent No.2 supported the contentions which have been made by the learned counsel for respondent No.3. In addition to this, the learned counsel for respondent No.2 contended that the petitioner has no legal right of allotment of land in question. It has further been contended by the learned counsel for respondent No.2 that the petitioner has carried out 'Kutchha' construction on the plot in dispute from 25th December 1981 to 27th December 1981 and therefore as notice was issued to the petitioner to demolish that construction, he approached the civil Court

and under the Court's order, is continuing in possession.

9. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

10. I find sufficient merits in the preliminary objection raised by the learned counsel for respondent No.3 and supported by learned counsel for respondent No.2 that this writ petition deserves to be dismissed only on the ground of suppression of material facts by the petitioner before this Court. To deal with this preliminary objection, relevant facts are to be given which are as under.

11. The Managing Officer, Ramnagar Colony and Assistant Collector, Choryasi Prant, Surat, sent a notice dated 30.11.73 to the petitioner to show cause as to why possession of said plot should not be taken from him and rent as per the rules should not be recovered. That notice was received by the petitioner on 13th December 1973 and he has given his written explanation on 18th December 1973. In the said explanation, the petitioner has given out that he is occupier and owner of the said plot and he has received the said plot for ever. However, during the personal hearing, he had informed that he is not ready and willing to pay the difference of rent. The said plot was leased for 'Tabela' (Stable), for keeping Buffaloes, but at that relevant time, it was found that the petitioner was not having any Buffaloes. Said plot was not being used and was lying vacant. The petitioner has not given any proposal for proper use of the said plot. In personal hearing, the petitioner has come up with case that the shed was broken down in flood and thereafter there is only compound and Bamboos are there. Taking into consideration it to be a case where there is no possibility of good use of the said plot and the said plot is kept open for very long period, lease of plot has been ordered to be cancelled by respondent No.2. This order has been made under the provisions of Rule 102 of the Disabled Persons (Compensation & Rehabilitation) Rules, 1955. The authority has further ordered that possession of the said plot should be handed over to the authorities concerned within seven days failing which possession of the said plot would be taken. This order has been made by the authorities on 22nd July 1974. The petitioner filed appeal against this order before the Settlement Commissioner and the Collector, Surat and the same has been dismissed. It is not in dispute that the petitioner has not challenged the aforesaid two orders before any other authority or before this Court.

12. The petitioner has not disclosed these two important facts in the Special Civil Application which were very material and relevant to the controversy. Contrary to it, the petitioner has claimed his right of allotment in this Special Civil Application on the basis of lease hold rights. The petitioner has cleverly drafted the petition and in para 7 of this Special Civil Application, absolutely false statement has been made that in the year 1974 the respondents wanted to cancel the lease of the petitioner. The respondent No.2 has made categorical statement in the reply that the petitioner has concealed the fact of cancellation of lease as well as dismissal of appeal filed against the order of cancellation of lease. The petitioner filed rejoinder to reply of the respondents No.2 and 3 and therein the fact that the lease of the plot in question has been cancelled and the appeal filed by him against the said order has also been dismissed, is not disputed by the petitioner.

13. The second concealment of the fact made by the petitioner is also equally very serious. On 11th March 1980, the petitioner made a statement to the Circle Inspector and in which he admitted that in the year 1970, 'Tabela' was demolished and as there was damage to the said 'Tabela' he ceased to do business of milk and is doing business of cloth at Sayad. The land is lying vacant and he is not in possession of it and he made further admission that if the said plot is given on sale he is ready and willing to purchase the same. If any other land is given in exchange of plot, the petitioner is ready and willing to accept the same also. The petitioner has not disclosed this fact that he was not in possession of the plot since 1970. The petitioner has admitted this fact that he made such statement which is clearly borne out from his application dated 19.7.96, annexure SR.1, filed by respondent No.3 at page 123. This is an application submitted by the petitioner in which he prayed to the concerned authorities for giving him copy of the statement dated 11.3.80 and the statements of other two witnesses as he wanted to produce those statements before this Court. The fact that the petitioner is not in possession of the plot since 1970 was very much relevant and material fact to which the controversy was raised by the petitioner, which has deliberately been suppressed by him from this Court. In writ petition, the petitioner has not stated that he is in possession of the plot or possession of the plot still continues with him. So far as the statement dated 11th March 1980 is concerned, the petitioner has made a false statement before this Court that no such statement was

given by him to the Circle Inspector.

14. There is also a third concealment of the fact made by the petitioner which is also very serious. The petitioner has admitted in rejoinder that the plot in question was divided into four plots and they were sold to four persons. The petitioner has not disclosed this fact in the Special Civil Application and further he has not made the other three auction purchasers, party in this writ petition.

15. The next concealment of fact is also of serious nature. Against the public auction of the plot fixed on 28th and 29th April 1980, the petitioner, though as per his case made representation through association and on the said representation, the Government has given a stay order staying the public auction on those dates, subsequently, that representation was rejected by the Government and the Government ordered to sell those plots in public auction and interim orders or stay orders were vacated by the Government vide letter No.PLT 1080/46543-R dated 11.7.80 which is clearly stated in the public auction notice dated 18.7.80. The petitioner has not only concealed this fact, but on the contrary he made false statement in the writ petition that his case was pending for sale of the plot with the Government and public auction of only remaining open plots of land was declared by respondent No.2 on 11.7.80. The stay which has been granted by the State Government has been vacated on 11.7.80, which fact as stated earlier, has been concealed by the petitioner.

16. The conduct of the petitioner after filing of this petition is also very important and relevant. This Court has granted interim order in favour of the petitioner directing the respondent-authority not to accept bid from the auction purchasers. In the writ petition, as stated earlier, the petitioner has nowhere stated that he is in possession of the plot and he has not prayed for any injunction against the respondents from dispossessing him from the said plot. After obtaining stay order from this Court, the petitioner has unauthorisedly entered into possession of the plot. He carried out 'Kutchha' construction from 25th December 1981 to 27th December 1981, for which a Panch case was made on 29th December 1981, and thereafter a notice was issued by respondent No.2 to the petitioner dated 31st December 1981 to demolish the said illegal construction. The respondent No.2 had gone with Police party to remove the said illegal construction on 21st January 1982 and at that point of time, the petitioner filed civil suit No.66

of 1982 in the Court of learned Civil Judge, (S.D.), in which stay order has been granted in favour of the petitioner. Thereafter this suit has been withdrawn by petitioner and he filed another suit No.397 of 1982 in which also, the Court has granted stay order in favour of petitioner. That interim order has been challenged by respondents No.1 and 2 by filing Misc. Appeal No.147 of 1982, but the said appeal was dismissed. Though it is a different matter that the Civil Court has granted stay order, but it is a fact that the petitioner has not stated that he is in possession of the plot and having any construction thereon, in this Special Civil Application. Copies of the orders passed by the Civil Courts have also been filed by the petitioner on record alongwith rejoinder affidavit and I have gone through those orders. The petitioner has not disclosed these facts before this Court that the suit has been filed by him in the year 1982. Only in the reply, when objection was taken by respondents, he filed those documents in rejoinder. A copy of the plaint of the Civil Suit No.397 of 1982 is filed by respondent No.3 on record and therefrom it is clear that the auction purchasers were not impleaded as party in the suit and the petitioner felt contended only by impleading the respondent-Government as a party. It was the duty of the petitioner to bring all subsequent facts on record which are relevant.

17. It is a case where the petitioner has raised construction of 'Kutchha Tabela' on the land after filing this petition. Once the matter was pending before this Court, the petitioner should have maintained Status-quo and this conduct of the petitioner to enter in the possession illegally in the land in dispute is very serious. The land was divided into four plots and the same have been auctioned, though it is a different matter that the possession thereof could not be given to the auction purchasers as the auction was not confirmed under the order of this Court. However, the petitioner has admitted the fact that this plot was divided into four parts and the same was auctioned. The petitioner has taken law in his own hands and has gone to the extent of unauthorisedly entering in possession of the land. This conduct of the petitioner itself is sufficient for dismissal of this writ petition.

18. The petitioner has obtained the order of Rule nisi as well as interim relief in his favour by suppressing material facts from this Court. It is a well settled law that the petitioner is not entitled as a matter of course, to a writ of Mandamus. Even if the

Court finds some merits in the contention of the case of the petitioner, it may decline to interfere in the matter under Article 226 of the Constitution of India where it feels that there is no failure of justice in the case. A Reference in this respect may have to the two decision of the Hon'ble Supreme Court in the cases of A.M. Allison v. B.L. Sen, reported in AIR 1957 SC 227 and in the case of Balvant Rai v. M.N. Nagrashna, reported in AIR 1960 SC 407. In the present case, from the facts on record, it is clear that at no point of time the petitioner was interested in purchase of this land. He was not in possession of the land since 1970 and his lease has also been cancelled in the year 1974, and the very fact that thereafter he has not taken up the matter further, concludes the issue that he was satisfied with the cancellation of lease. No right whatsoever of the petitioner was there in the land in dispute and he could have only right to participate in the auction which right also he has not exercised. At one point of time, the grievance has been made by the petitioner before the Government that this land has to be given to him straightway without auction, but the stay order granted to the auction of the plot in question has been vacated and the plot was put to auction. In fact, if the petitioner was really interested in the plot, then he should have participated in the auction and should have put his bid, which he has not done. Admittedly, the plot was divided in four parts and each part was separately auctioned and was purchased by four different persons including the respondent No.3. These are individual purchasers including respondent No.3. Though the petitioner was having all the facts in his knowledge that the plot is to be sold, he has not participated in auction though he failed in his attempt to get the said plot straightway allotted to him. This fact clinches the issue. The petitioner was the person who was not interested in the plot but he was only interested to get the said plot by paying nominal amount. The petitioner has failed to establish before this Court that he has any legal or fundamental right over this plot. Not only this, the petitioner has felt contended only by impleading the respondent No.3, who was the purchaser of only 1/4th plot in question and three other persons were not made the party. That shows that he was not interested in the plot. It is true that the auction has not been confirmed so far, but nevertheless the interest of those persons has accrued in the plot, and any order made behind their back may adversely effect accrued rights of those three persons, who are not made party to this petition. The petitioner has admitted in rejoinder that the said plot was sold to the four persons and

taking into consideration this fact, it is a case where interference of this Court is not called for under Article 226 of the Constitution of India.

19. In the proceedings under Article 226 of the Constitution which are initiated for attracting extra ordinary jurisdiction of this Court, it is of utmost importance that the conduct of the petitioner should be very fair and reasonable. The petitioner should come forward with clean hand. This Court cannot encourage the idea that the litigant is entitled to adopt dubious, dishonest or fraudulent means and make false averments or suppress material facts while submitting writ petition in this Court. The falsehood of the petitioner has been exposed by respondents by filing a reply and necessary correct facts, with duly supported documents. The petitioner has admitted those facts and he has not controverted in the rejoinder that he has not concealed any facts. The fact that the petitioner has not controverted those facts imply that he has admitted that he suppressed material facts from this Court.

20. It would be laying down a very dangerous principle into the conduct of human affairs if Courts of law are allowed to be flooded with petitions based on false averments. This Court can help in its extra ordinary jurisdiction, only those persons who approach this Court with clean hands, and if in a given case the Court finds that the conduct of the petitioner has not been honest and free from deceit the Court may decline to give any relief to the petitioner. A person who adopts dubious means must suffer the consequences of his conduct. In this writ petition, the petitioner obtained ex parte stay order as well as order of issue of notice by not making true and randed disclosure of material facts. The petitioner disentitle himself of any relief on merits of this case.

21. The law is well settled that the petitioner is not entitled as a matter of course to a writ of Certiorari, and Mandamus, and they must be perfercly frank and open to the Court. They are under obligation to the Court to make full and correct disclosure of all the material facts in a candid manner and if they do not do so and suppressed any material fact and thereby obtained a rule nisi or notice or stay order, the Court will not grant any relief to them on merits. In the case of Asiatic engineering Co. vs. Achhru Ram, reported in AIR 1951 ALL 746, the Full Bench of the Allahabad High Court while dealing with the obtaining of an ad interim ex parte stay order by suppressing the facts, has held

that a person obtainingt an exparte order or a rule nisi by means of a petition for exercise of the extra ordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant fact from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. The Court should insist that person invoking the extra ordinary jurisdiction of the High Court should not attempt in any manner to misuse a valuable right by obtaining exparte orders by suppression, misrepresentation, or misstatement of facts. It has further been said in this case that if the facts are stated in such a way as to mislead and deceive the Court, there is a power inherent in the Court, in order to protect itself and to prevent an abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits of the application. In the case of K.K. Ananthan Pillai vs. The State of Kerala, reported in AIR 1968 KERALA 234, it has been laid down that a petitioner resorting to suppressio veri and suggestio falsi obtains exparte stay order should not be given any relief in a writ petition under Article 226 of the Constitution. It has been said in this case that the petitioner's conduct is a relevant factor in the matter of invoking an extra ordinary jurisdiction. It has further been held that whatever sympathy one might feel on the merits, where the petitioner is guilty of suppressio veri and suggestio falsi, he disentitled himself to invoke extra ordinary jurisdiction of this Court. In the case of Nand Lal vs. State of Jammu and Kashmir, reported in AIR 1960 JK 19, it has been held that where the petitioners under Article 226 of the Constitution have not stated the relevant facts correctly and candidly either in their petition or in the affidavit in support of their petition, this is by itself sufficient to ental an outright dismissal of the writ petition without going into its merits. It has further been held in this case that even if the petitioners have a good case on merits the Court will be entitled to decline to go into the merits and dismiss their petition because the conduct of the petitioners has been such as to mislead the Court in exparte interim order. In this case the leading authority of Rex vs. Kensington Income Tax Commissioner, reported in 1917(1) KB 486 has been referred and relevant extract from the observations of Cozens Hardy M. & quoted as follows:

"On an exparte application uberrima fides is required, and unless that can be established if there is anything like deception practised on the Court, the Court ought not to go into the merits

of the case, but simply say we will not listen to your application because of what you have done." In that very case Lord Scrutton L.J. put the matter very clearly by saying as under:

"It has been for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an *ex parte* statement he should make a full and fair disclosure of all the material facts not law.... The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any which it has taken on the faith of the imperfect statement."

In this case although the Court had found that the Commissioner had no jurisdiction to make the assessment yet it said;

"We refuse the writ of Prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

This authority has also been followed by the Full Bench of Allahabad High Court in the case of Asistic Engineering Company (*supra*). Lord Hatherly in *R. vs. Churchwardens of All Saints Wigan*, reported in 1876(1) A.C. 611, has stated:

"Upon a prerogative writ there may arise many matters of discretion which may induce the judges to withhold the grant of it matters connected with delay or possibly with the conduct of the parties."

Reference may also have to the case of *Reg. vs. Gerland*, reported in 1970(39) LJQB 56, in which it was held:

"Where a process is *ex debito justicie* the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bonafide."

22. From the facts which have been brought on record and have not been controverted by the petitioner, it is a clear case where the petitioner has suppressed material facts from this Court. Not only he has suppressed those

facts, but has obtained order of Rule nisi as well as interim relief in his favour. This writ petition deserves to be dismissed only on this ground and this Court is not under any obligation to go on the merits of the case. Yet there is another substantial ground on which this writ petition deserves to be dismissed. The three other auction purchasers who have their own independent right were not impleaded as party. Any decision given in favour of the petitioner in this petition will certainly effect their right and it is a well settled law that no decision should be given by the Court which may adversely effect right of other persons who are not before it. The petitioner has realised that the auction purchasers are necessary party, but has only chosen to implead one of them and three have been left out. This writ petition therefore suffers from defect of non-joinder of necessary parties.

23. The conduct of the petitioner after filing of the writ petition is also material and relevant in this case, and on that conduct also, the petitioner disentitled himself from getting any relief from this Court. The petitioner is a person who has no respect whatsoever for law and he has gone to the extent of entering into possession of the land unauthorisedly and raising 'Kutchha' construction thereon. The matter does not end here. He further dared to approach to the Civil Court against the action of the respondents No.1 and 2, to give a notice of demolishing the construction, for protection of his unauthorised possession and the construction raised on the land. In the Civil Court, the petitioner has taken undue advantage of the fact that this Special Civil Application was pending before this Court and as such, stay has been granted. The petitioner has claimed interim relief on the ground that he is the owner of the land though the lease hold right of the petitioner has already come to an end and the petitioner has challenged that order of cancellation of lease which has also been confirmed in appeal and that final order has not been taken by him to any further remedy.

24. Though the case is not required to be considered on merits as the petitioner has suppressed the material facts and disentitled himself from getting any consideration of the matter on merits, but otherwise also, I do not find any substance in this petition on merits. The claim of the petitioner for allotment of the land in dispute is based on his lease hold or tenancy rights which have been given to him by respondent No.2. That lease hold right/tenancy right has come to an end in the year 1974. As stated earlier, the petitioner has not

challenged the order of the Appellate Authority confirming therein the order of the respondent No.2 to cancel the lease hold/tenancy rights of the petitioner. So that order attained finality. It is true that in the year 1976, some correspondence was rested between the respondent-department and the petitioner, but that will not give any right to the petitioner on the land nor it is case of the petitioner that the earlier order passed of cancellation of lease hold/tenancy right has been reviewed or recalled. The demand of rent of the plot in dispute under the correspondence of the year 1976 may be there for the period during which his lease hold/tenancy rights subsisted and this correspondence has to be read to that extent only. It is a different matter that the petitioner has joined himself with other refugees who were holding tenancy/lease hold rights in the open lands and their cases were there for consideration of the respondent-department. This joining of hands by the petitioner with other persons is not enough and this Court cannot be oblivious of the fact nor the respondent also could have been, that the lease hold/tenancy rights of the petitioner came to an end by passing a specific order and the petitioner has failed in the appeal. So whatever claim which the petitioner made for allotment of the land in question was based on non existent ground.

25. The demise plot was divided in four different parts and individually these parts were to be auctioned. Accordingly the four different persons including respondent No.3 became auction purchasers. The very fact that these plots were divided goes to show and establish that it was an open plot and on which the petitioner has no possession whatsoever. The petitioner has not participated in the auction proceedings. The auction notice was issued on two occasions and the petitioner was aware of those notices. Despite of having full knowledge of the auction of the plots, the petitioner has not participated in the auction which goes to show that he was not interested to purchase this plot. The petitioner, as per his own case, was given the land in dispute on lease/tenancy for doing milk business, but it is also an admitted case of the petitioner that since 1970, he discontinued the said business and he is doing cloth business. The petitioner has not produced any evidence or material on record to show and establish that he was doing milk business thereafter and he was having Buffaloes. Not only this, the petitioner has also failed to produce any evidence or material to show how he was and for what purpose he was in possession and occupation of the demise land for all these years. In absence of that material and evidence the only inference which

follows therefrom is that the petitioner was not in possession of the land since 1970 and the statement which has been given by him before the Inspector was a correct statement. Only when in 1976, the letter was received by the petitioner, he started to assert his lease hold/tenancy right over the disputed land though the same has been divested in the year 1974 itself. So far as the deposit of rent is concerned, it is suffice to say that till the lease hold/tenancy right of the petitioner are not cancelled, he has and would have paid the rent, but by mere payment of rent it cannot be accepted, assumed or inferred that the petitioner continues in possession of the land. The petitioner has failed to produce, as stated earlier, any other evidence except the rent receipt to show and establish that he continued in possession after 1970. So neither the petitioner has any lease hold/tenancy right in the said land, nor he was in possession thereof and as such, his claim for allotment of the land on the aforesaid ground was wholly untenable and it has rightly been not accepted. It is a case where none of the legal or fundamental rights of the petitioner are infringed. The petitioner has, after filing of this Special Civil Application, made an attempt to create the evidence on which no reliance could have been placed. The Civil Court, though protected the petitioner, but that order will not be of any help to the petitioner as it is not binding to this Court. Though at one state, I thought of exercising suo-motu powers of superintendence under Article 227 of the Constitution of India, or power of revision under Section 115 of the Civil Procedure Code, 1908, to quash and set aside those orders, but as I have decided on merits that the petitioner's claim for possession on the land is manufactured and concocted, this action need not be taken. Even otherwise, these two orders passed by the Civil Court are not binding on respondent No.3 who is admittedly, not a party in the Civil Suit filed by the petitioner.

26. This Court has directed the petitioner to remain present and in compliance of the direction, the petitioner is present today in the Court. At one point of time, I thought of to initiate Contempt proceedings against him as well as to give a notice to show cause why he should not be prosecuted for entering into unauthorised possession in the land in dispute and raising illegal construction thereon, but looking to the fact that the petitioner is an aged person of 76 years, I consider it to be a case where a lenient view should be taken.

27. The respondent No.3 has been deprived of for all

these years possession of part of the demise land which she purchased in open auction. This land would have been put to use for residential/commercial purpose which is permissible as per the law. The construction costs on the said land to be made by respondent No.3 in the year in which it was auctioned would have been much less than what it is today. The respondent No.3 is the bonafide purchaser of the land in auction and she has been put to suffer for all these years by petitioner, by filing this Special Civil Application. It is very difficult to ascertain the actual loss which the respondent No.3 would have suffered, but at the same time, it is a case where the respondent No.3 has suffered loss. Taking into consideration the totality of the facts of the case, the petitioner is directed to pay to the respondent No.3, Rs.25,000/- by way of compensation. It is also a fit case for imposing exemplary costs on the petitioner. The petitioner is directed to pay Rs.5,000/- as costs of this petition. The learned counsel for the respondents urged that in case this amount of costs is ordered to be deposited by the petitioner in the Bar Council of Gujarat, under the head, "Advocates' Welfare Fund", they have no objection. Order accordingly. The petitioner is directed to deposit Rs.5,000/- in the office of the Bar Council of Gujarat, at Ahmedabad, in the account of "Advocates' Welfare Fund", within two months from today. A copy of this order may be sent to the Secretary, Bar Council of Gujarat, Ahmedabad, and in case, the petitioner fails to deposit Rs.5,000/- (five thousand) in the office of the Bar Council of Gujarat, within two months from today, then it shall be open for the Secretary, Bar Council of Gujarat, to take appropriate action available for compliance of the aforesaid order.

28. In the result, this writ petition fails and the same is dismissed. Ad-interim relief, granted by this Court, stands vacated. Rule discharged.

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(sunil)